

U.S. Department of Labor

Office of Administrative Law Judges
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DATE ISSUED: April 21, 2000

CASE NO.: 1999-JTP-15

In the Matter of

ILLINOIS DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS, (DCCA)
Complainant

v.

UNITED STATES DEPARTMENT OF LABOR, EMPLOYMENT AND TRAINING
ADMINISTRATION, (DOL)
Respondent

Appearances:

Ms. Susan L. Budzileni, Esq.,
For the Complainant

Ms. April N. Sochan, Esq.,
For the Respondent

BEFORE:
Richard A. Morgan

DECISION AND ORDER REQUIRING REPAYMENT

This matter arises under the provisions of the Job Training Partnership Act, 29 U.S.C. § 1501, *et seq.*, (“JTPA” or “the Act”) and the regulations thereunder at 20 C.F.R. § 626-638.¹ It involves a dispute concerning the recovery of U.S. Department of Labor (“DOL”) grant monies the state complainant grant recipient, the Illinois Department of Commerce and Community Affairs (“DCCA”), paid a subgrantee, Local 194 Technical Training Center (“LTTC”), for claims related to on-the-job training for dislocated workers, under the Act, in 1989. LTTC had defrauded DCCA into paying it for costs it had not incurred.

PROCEDURAL HISTORY

¹ “Grievances, investigations and hearings pending on or after July 1, 1993 will be governed by the procedures described in subparts E, F, and H of this part 627.” 20 C.F.R. § 627.904(j).

The JTPA grant period was from November 1988 through June 30, 1989. The grant was closed out in September 1989 with DCCA having paid LTTC a total of \$123,017.28. An investigation, conducted by the Office of the Inspector General, from May 1992 through September 18, 1997, revealed LTTC and its Director, Mr. Jewel Frierson, had entered into a Consent Order, on July 29, 1997, essentially admitting to defrauding DCCA.

Based upon the investigative memorandum, the Grant Officer issued an Initial Determination, on February 10, 1999, holding DCCA financially responsible for misspent grant money in the amount of \$123,017.00. DCCA responded on May 7, 1999. After consideration of the state's response, the Grant Officer issued his Final Determination, on June 17, 1999, reducing the disallowed amount to \$40,870.00.

On July 7, 1999, DCCA requested a hearing before an administrative law judge, pursuant to 20 C.F.R. § 627.801. I was assigned the case on August 6, 1999. Based upon the parties' requests, the matter was continued until February 9, 2000.

A hearing was held on February 9, 2000, in Springfield, Illinois.² The parties were afforded the opportunity to call and cross-examine witnesses and present evidence. The Grant Officer's Administrative file, with twenty-five documents, was admitted into evidence as Respondent Exhibit ("RX") 1, as well as Respondent Exhibits 2- 3 and Complainant Exhibits ("CX") 1 - 3. A copy of the Grant Agreement was admitted and received post-hearing as Joint Exhibit ("JX") 2. The parties submitted their arguments in April 2000.

ISSUES³

I. Whether the DOL may recover from the Illinois Department of Commerce & Community Affairs disallowed costs of \$40,870.00, consisting of Title III Job Training Partnership Act grant monies DCCA paid a sub-recipient for claims related to on-the-job training which never occurred?

II. In determining whether to impose the sanction of repayment, it must be determined whether the recipient has met the four (4) criteria of 29 U.S.C. § 1574(e)(2), i.e., that DCCA has adequately demonstrated it has:

(A) established and adhered to an appropriate system for the award and monitoring of contracts with sub-grantees which contains acceptable

² The Workforce Investment Act of 1998, P.L. 105-220 ("WIA"), 29 U.S.C. § 2801, *et seq.*, enacted August 7, 1998, consolidates several job skills programs, including the JTPA. Section 190 (WIA) provides that until July 1, 2000, all references, in other provisions of law, to the JTPA shall be deemed to refer to that provision or the corresponding provision of the Workforce Investment Act of 1998. 29 U.S.C. § 2940(b). However, section 199(c)(2) provides the JTPA is not repealed until July 1, 2000. Section 507 provides, unless otherwise provided in the Act, the Act and amendments to the Act take effect upon enactment.

³ "Waiver" of the disallowed amount was not an issue because DCCA had never request it. (Hearing Transcript ("TR") 22). Further, DCCA never made an issue of the amount disallowed and admitted the funds were improperly spent. (TR 22).

standards for ensuring accountability;

(B) entered into a written contract with such sub-grantee which established clear goals and obligations in unambiguous terms;

(C) acted with due diligence to monitor the implementation of the sub-grantee contract, including the carrying out of the appropriate monitoring activities (including audits) at reasonable intervals; and,

(D) taken prompt and appropriate corrective action upon becoming aware of a violation of the act (chapter 19) or regulations under the act by such sub-grantee.

III. Whether, under 29 U.S.C. § 1574(e), in determining whether offset against federal funds, is appropriate, the mis-expenditure of funds was due to willful disregard of the requirements of the JTPA (chapter 19), gross negligence, or failure to observe accepted standards of administration on the part of the recipient, DCCA?⁴

STIPULATIONS

The parties agreed to the following stipulations of fact (JX 1):

1. On January 5, 1989, DCCA provided a JTPA grant, No. 88-70128, under a written contract, with Local 194 Technical Training Center (LTTC), the “subgrantee”, providing for the availability of a maximum amount of \$312,410.00 in JTPA funds.
2. The period of the grant was 11/1/88-6/30/89. LTTC was eligible for reimbursement of allowable costs incurred during that period. The grant expired on 6/30/89.
3. The purpose of the grant was to assist Chicago-area Campbell Soup Company employees, who had lost their jobs due to a plant closing.
4. LTTC submitted an initial invoice, dated January 27, 1989, covering the period of November 1, 1988 through January 31, 1989, for an amount of \$119,646.61. This amount was paid by DCCA.
5. LTTC submitted a second invoice, dated March 13, 1989, claiming reimbursement in the amount of \$52,000.00. DCCA did not pay this invoice.
6. LTTC submitted a third invoice, as part of a closeout package, dated August 4, 1989,

⁴ The Board has found that § 164(e)(1) does not establish an independent basis for liability. *Arizona Dep’t of Economic Security v. U.S. DOL*, 94-JTP18 (ARB June 7, 1996), *pet. filed* (9th Cir. July 3, 1996). Dicta, in *The Matter of Motivation, Education & Training v. USDOL*, 86-JTP-10 (ARB January 29, 1990), suggests § 164(e)(1) does not establish an independent basis for Secretarial waiver of collection of misspent JTPA funds.

claiming final costs of \$123,407.37 for the entire grant period.

7. LTTC submitted a revised “closeout” package, dated September 14, 1989, reflecting final costs totaling \$123,017.28 for the entire grant period. These costs were a total of the costs DCCA had approved and paid of \$119,646.61 and \$3,370.67.

8. The total amount DCCA paid LTTC was \$123,017.28.

9. DCCA maintained a computerized JTPA Management Information System in which JTPA subrecipients logged in the participant’s personal information (i.e., name, social security number, and other employment data) and services provided to them.

10. Since LTTC lacked a computer terminal, the Chicago Mayor’s Office of Employment & Training provided LTTC with access to its JTPA Management Information System. LTTC’s participant data, including personal information and information regarding services rendered, was entered into this system.

11. Under the grant terms, LTTC was to provide a matching contribution to equal or exceed 100% of the actual expenditures reported to DCCA.

12. Part III of the Grant Agreement, “Terms and Conditions Governing the Grant,” states that the funds were authorized to be used for a range of training and other services. On-the-job (“OJT”) as a specific method of training is not mandated under this part, although it was one objective of LTTC.

13. LTTC was required by its grant agreement with DCCA to have performed a financial and compliance audit of the grant.

14. No audit of the grant was performed at any time.

15. LTTC did not receive the maximum dollar amount available under the grant.

16. On July 29, 1997, the District Court for the Northern District of Illinois, Eastern Division, approved and entered a Consent Order, Case No. 95 C 503, in a False Claims Act action (31 U.S.C. 3729, *et seq.*).

17. DCCA was not a party to the matter entitled United States of America v. Jewel Frierson, 95 C 503 (Northern District of Illinois).

18. The United States of America did not seek DCCA’s consent or approval when it agreed to enter into the July 1997 Consent Order with Jewel Frierson discharging him from civil liability arising under the False Claims Act relating to the JTPA grant.

19. LTTC is defunct.

20. Presently, there is no avenue for recovering the \$40,870.00 falsely claimed by LTTC. At this point, it appears that any collection actions commenced against the LTTC or its director would be futile.

21. ETA issued an initial determination, on 2/10/99, disallowing costs claimed by DCCA, of \$123,017, the entire amount of DCCA's payments to LTTC.

22. Following DCCA's 5/10/99 response to the Initial Determination, ETA issued its Final Determination, on 6/17/99, allowing costs of \$82,147 and disallowing \$40,870.

23. DOL allowed \$82,147 of the Questioned Costs because the Grant Officer found these costs were reasonable and necessary for the administration of the program.

24. The final disallowance amount of \$40,870.00 was arrived at by adding the \$37,500.00 claimed by LTTC as OJT cost reimbursement and the \$3,370.67 claimed by LTTC's as a close-out refund.

25. The 1988 Code of Federal Regulations, which contained 20 C.F.R. § 629.44(d)(5), was in effect at the time the Grant Agreement between DCCA and LTTC was executed.

FACTS

Three witnesses testified on behalf of DCCA: Mr. David F. Daigh, the Chief of Field Operations; Mr. Tariq Gandhi, Chief, Office of Grant Administration; and, Mr. Tim Dunkel, External Audit Manager. ETA's offer less than a week before the hearing to have a grant officer, other than the one who administered the grant in question, testify was denied as untimely. (Hearing Transcript ("TR") 22). Thus, ETA offered no witnesses and relied on the administrative file.

DOL Evidence

Grant Agreement

The Grant Agreement was marked as RX 2. The Notice of Award provided that LTTC "has satisfied all conditions precedent to the award of a grant" under the JTPA. The subrecipient agreed to "prepare all necessary information for the JTPA program" including "programmatic reports" and "appropriate records of actual costs incurred" and submit them to the DCCA as part of the award. The Grant Agreement established budgetary limitations, strict methods of compensation, repayment of misspent funds or overpayments, strict fiscal control requirements, liberal and comprehensive inspection authorizations, and an annual financial audit and compliance audit. DCCA reserved the right to conduct special audits. It provided the subrecipient's noncompliance with the grant terms and conditions would result in suspension, disallowance of payments and withholding of funds, as well as termination for cause or convenience of the DCCA.

The subrecipient made specific assurances and certified that it would comply with the JTPA, state and federal laws, submit all required reports, provide adequate fiscal controls, record-keeping systems, and accounting procedures, and permit full access to its books. The Grant included a comprehensive section (Part IV, 66 pages) dealing with the scope of work which contained eight objectives and evaluation criteria. Section IV, Appendix I, C, contained a description of the subrecipient's administrative plan related to monitoring, fiscal reports, and corrective action plans. Section D set forth the specifics of LTTC's fiscal systems, including procedures to control classification of costs and reconciliation of accounts. Mr. Frierson was bonded at \$50,000 by Surety Bonds.

The Grant Agreement, at 8 and 12, provides that:

No officer or employee of the Grantee . . . shall (a) participate in any decision relating to any contract negotiated under this Grant which affects his personal interest or the interest of any corporation, partnership, or association in which he is, directly or indirectly, interested, or (b) have any financial interest, direct or indirect, in such contract or in the work to be performed under such contract.

The [Grantee] will establish safeguards to prohibit employees from using positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

The Grant Agreement had budgeted \$43,290.00 for administration and the close-out package revealed \$46,082.19 in administrative charges. (TR 135).

Administrative File

The Administrative File establishes that Mr. Jewel Frierson admitted the January 27, 1989 certification he signed and submitted to DCCA to obtain JTPA Title III grant monies was false, in that \$37,500.00 designated for on-the-job-training (OJT) had not actually been incurred, the amount had been allocated solely for OJT costs, and the terms of the grant had not been modified to permit this amount to be expended for any other purpose. (RX 1). He further admitted supporting documentation for actual OJT expenditures was not on file at LTTC and that as the Director of the training center he knew or had reason to know such documentation was not on file as claimed.

Jewel Frierson was the president of the now defunct Local 194, Retail, Wholesale and Department Store Workers Union (RWDSU), which had represented Campbell Soup Company employees in Chicago, Illinois. Local 194 had a poor financial situation in 1988 with Mr. Frierson having claims against it for personal loans he had made in excess of \$200,000.00. Campbell laid off workers during 1987 and 1988. In 1988, Frierson created Local 194 Technical Training Center (LTTC) and secured a JTPA Title III grant, No. 88-70128, to provide dislocated Campbell

Soup employees job training.⁵ The grant provided for the availability of \$312,410.00 in JTPA funds. The grant period was November 1, 1988 to June 30, 1989. The grant provided for up to \$100,000.00 for OJT employer reimbursement.

DCCA had assigned Carol Schmidt, an accountant, to handle the accounting matters related to LTTC's grant for the entire grant period. Ms. Schmidt did not testify at trial.

LTTC, under an agreement with the Chicago Mayor's Office of Employment and Training (MET), provided non-financial assistance to LTTC including the entry of LTTC's client data into DCCA's JTPA Management Information System. DCCA required grant recipients to report certain participant information through its computerized JTPA Management System. The computerized JTPA Management System contained no indication that any of LTTC's participants under the present grant received OJT.

Although DCCA paid LTTC's first claim, \$119,646.61, of January 27, 1989, they did not pay its second claim for \$52,000.00, of March 13, 1989, because either Mr. Daigh or Mr. Tomlinson believed there were some monitoring or eligibility issues which needed to be resolved with LTTC. The first claim, included \$37,500.00 in OJT costs, was false because LTTC had not incurred OJT costs.

Because of errors DCCA found in LTTC's first "close-out" package, of August 4, 1989, DCCA, i.e., Ms. Schmidt, prepared a revised close-out package, dated September 14, 1989, based on the information found in the original package. DCCA completed all the forms in the package except a portion of the Cost Category Expenditure Summary. DCCA paid LTTC an additional \$3,370.67, which was the difference between the earlier payment and the claimed \$123,017.28 total program costs.

On March 21-23, 1989 and April 4-6, 1989, DCCA program managers (Michael Whitted, Willis Bailey, and Kenneth Smith) conducted compliance monitoring visits at LTTC, which resulted in findings related to LTTC's administrative systems and program operations, but not OJT employer reimbursement.

On May 23 and 25, 1989, DCCA staff members (Tariq Gandhi and others) conducted monitoring visits to LTTC to assure the reliability of financial reports through the review of financial systems and accounting records. No findings concerning OJT employer reimbursement were made.

The subgrantee was required by the agreement with the DCCA to perform a financial and compliance audit of the grant. This was not done and the subgrantee was not given additional grants. DCCA had a single audit of DCCA prepared for the fiscal year ending June 30, 1990.

DCCA was not provided with information concerning the LTTC investigation until March

⁵ The Administrative File reveals questionable practices by Mr. Frierson, such as hiring and paying his son-in-law and daughter to perform LTTC work.

11, 1999, ten years after the grant closeout. (D 22, page 58). In its response to the grant officer's Initial Determination, DCCA admitted there was evidence for disallowance of the OJT costs. (D 22, page 61). DCCA also admitted Jewel Frierson committed fraud, but since the Consent Order was issued eight years after the completion of the grant and Local 194 was no longer in existence, there was no collection avenue.

DCCA Evidence

Mr. David F. Daigh, presently the Chief of Field Operations, testified he was the supervisor of DCCA's Northern Program Management and Assistance Unit in 1988 and has monitored JTPA grants since the program's inception. (TR 32). He had oversight responsibility for the "non-fiscal" monitoring or "programmatic" monitoring staff in thirteen Service Delivery Areas. (TR 33). He was familiar with the present cost-reimbursement grant. Under the Grant Agreement, his unit was responsible for "non-fiscal" or "programmatic" monitoring. His unit would monitor subrecipients to determine whether they complied with non-fiscal requirements of federal and state law and regulations, such as servicing eligible participants and not funding political activities. (TR 36-38, 44). During the grant period his staff conducted two formal visits and visited informally an unknown number of times. (TR 37). The purpose of a first visit would have been to familiarize the subrecipient with JTPA policies. In an initial visit, his unit found LTTC did not meet DCCA's documentation requirements for participant eligibility and thus conducted a 100% file review. (TR 39). This was reported on and corrected. (TR 40; CX 1). LTTC, as a new grantee, got an earlier monitoring visit than DCCA's regular grantees. (TR 42).

Mr. Tariq Gandhi, presently the Chief, Office of Grant Administration, testified that in 1988, he was DCCA's Manager of Fiscal Monitoring and Assistance. (TR 53). He has monitored about 2000 grants since 1984. (TR 54). In his former position he had oversight of JTPA grants and conducted on-site fiscal monitoring of grantees to ensure funds were spent in accordance with the rules and regulations. (TR 55). He and his unit monitored the present grant and reviewed LTTC's books and records, including paychecks to employees. (TR 56). His unit looked for documentation behind checks and disbursements. (TR 56).

Mr. Gandhi testified that LTTC was required to follow generally accepted accounting practices ("GAAP") and "fund accounting practices" which are also set forth in OMB Circulars. (TR 57, 58, 67). Under GAAP, charged costs must be supported with adequate documentation. (TR 58).

He visited LTTC once for a three-day period, in May 1989. (TR 58; CX 2). Using DCCA's "standard monitoring instrument," which involves less than 100% sampling but sampling from each cost category, he found LTTC's rent was irregularly charged, certain charges were mischaracterized and there were some hidden costs. (TR 59-60, 66-67, 74). So, LTTC was "written-up" in CX 2. Since, at the time of this audit, he found no excess cash on hand as a "red flag," he did not inquire into OJT costs and charges. (TR 78). The OJT cost category would have been sampled had the books reflected OJT costs. (TR 79-80, 87-88). His unit did, as a practice, compare the financial electronic reports DCCA received with grantees' accounting record books. To his knowledge, no audit of LTTC was done. (TR 86).

Mr. Gandhi added, it would have been Mr. O'Brien's unit which determined a budget for the LTTC grant program. (TR 89). Mr. Gandhi's unit would not have compared the budget for LTTC with LTTC's accounting records; that would be the responsibility of DCCA's "programmatic" side. (TR 91-92). The fiscal people look at the trees and the programmatic people look at the forest. (TR 92). He admitted with better intra-agency communication the fraudulently claimed OJT costs "might" have been picked up earlier. (TR 93).

Mr. Gandhi admitted if a cost was not reported in a category he would not question "anything that wasn't there." (TR 70). He did not find it unusual for LTTC not to have a cost category for OJT and that would not be something to cue a fiscal audit because it is a "programmatic" issue. (TR 72). Normally, reconciliation between costs and reimbursements occurs at the end of a grant program. (TR 75). He found the costs in LTTC's closeout were necessary, reasonable and allowable. (TR 76).

Mr. Tim Dunkel, DCCA's External Audit Manager, testified he has audited grantees under JTPA rules since 1983 when the Act was passed. (TR 95). His unit reviews audits conducted by grantees. (TR 96). He established the foundation for the American Institute of Certified Public Accountants (AICPA), "Statement of Position 98-3", Section 4.42, discussed below. (TR 97-98). CPA's must use AICPA standards, but private or local entities need not. (TR 98). This standard would have been in effect in 1989. (TR 100). Mr. Dunkel testified the standard means that audits are not always expected to find whether an organization which was audited had committed fraud; it does not mean inadequate monitoring or lack of diligence by the auditor. (TR 102-103).

Mr. Dunkel's division was not responsible for reviewing LTTC's close-out package. (TR 106). He did not believe it would have been possible to determine the initial claim for OJT costs was inaccurate if the OJT costs incurred were "support" versus "direct participant training" costs. (TR 108). Since Mr. Dunkel's unit reviews over 1600 grants a year, it would not be reasonable to have requested LTTC's request for cost reimbursement from DCCA auditors before visiting LTTC. (TR 113, 116). He admitted, hypothetically, had they had the initial request, it may have been possible to discover the discrepancy. (TR 112-113). Mr. Dunkel added that as long as the requested cost reimbursement is for a cost which appears necessary and reasonable, within the budget and within the parameters of the grant, "it wouldn't be worth anybody's time" to question it (before the close-out). (TR 114-115). He testified that from an audit perspective "self-attestation" documents are not very reliable. (TR 115).

DCCA submitted a letter from DCCA to Mr. Jewel Frierson, dated June 12, 1989, summarizing the results of compliance monitoring visits of March 21-23 and April 4-6, 1989, by DCCA employees Michael Whitted, Willis Bailey, Kenneth Smith, and Art Carlson. (CX 1). The purpose of the visit was to monitor LTTC's Title III program to ensure compliance with the "JTPA and associated rules, regulations and policies." (CX 1). The DCCA made findings and suggested corrective actions in two major areas: administrative systems; and, program operations. Several additional areas, including: MIS, DWC monitoring; outreach, recruitment and selection; counseling, job development, job search, and job placement; program compliance; program limitations; and on-site review, were monitored, with no findings. The DCCA required LTTC to

respond by June 24, 1989. DCCA conducted a 100% review of the Campbell Soup participant folders and provided LTTC with copies of the JTPA, the Illinois Administrative Rules, an On-the-Job Training Technical Assistance Guide, and Policy and Technical Assistance letters. The visit revealed there was no system in place for documenting and reporting required matching funds and recommended a correction of the deficiency. (CX 1).

DCCA submitted a letter from DCCA to Mr. Jewel Frierson, dated June 20, 1989, summarizing the results of compliance monitoring visits of May 23 and 25, 1989, by DCCA employees Tariq Gandhi and staff of the Fiscal Monitoring and Assistance Unit. (CX 2). The purpose of the visit was to “assure the reliability of financial reports through review of financial systems and accounting records.” Several findings, observations, and recommended corrective actions were made concerning rental charges and salary charges. DCCA required corrections be made by July 31, 1989 and that LTTC submit a written response to its report by July 14, 1989. The following areas were also monitored, but no findings made: purchasing and receiving; personnel; bank reconciliations; budgetary controls; cash receipts; DSGR reporting; payroll; inventories of expendable and non-expendable property; monitoring of subcontractors; and, systems and procedures to ensure cost limitations and cost allowabilities were adhered to with regard to federal and state rules and regulations. (CX 2).

An extract of the American Institute of Certified Public Accountants (AICPA), “Statement of Position 98-3, Section 4.42, March 17, 1998, concerning “reasonable assurance” was submitted. (CX 3). It states:

SAS No. 1, section 230, “Due Professional Care in the Performance of Work” (AICPA, Professional Standards, vol. 1, AU sec. 230), states that since the auditor’s opinion on the financial statements is based on the concept of obtaining reasonable assurance, the auditor is not an insurer and his or her audit report does not contain a guarantee. Therefore, the subsequent discovery that a material misstatement, whether from error or fraud, exists in the financial statement does not, in and of itself, evidence, (a) failure to obtain reasonable assurance, (b) inadequate planning, performance, or judgment, (c) the absence of due professional care, or (d) a failure to comply with GAAS (Generally accepted accounting standards).

THE LAW

On January 31, 2000, I granted the Respondent’s Motion for Summary Decision in part. This resolved significant legal issues in the case. Since DCCA had not appropriately challenged the dollar amount disallowed and had never submitted a documented request for a waiver, I held those matters either established or not in issue. The DOL consistently argued that the “willful disregard . . . gross negligence, or failure to observe accepted standards of administration,” referred to in section 164(e)(1) of the Act, pertains to either the act of misexpenditure or to the subgrantee’s actions, i.e., the LTTC fraud here, and that the criteria of section 164(e)(2) apply only to the issue of “waiver” which I had held not pertinent to these proceedings. Essentially, the DOL made an argument to impose strict liability once it was determined the grant funds were

misspent.

The Act and regulations here permit hearings before an administrative law judge upon appeal or request “by any recipient upon whom a corrective action or a sanction has been imposed by the Secretary.”⁶ Section 166 of the Act, 29 U.S.C. § 1576; 20 C.F.R. § 627.801(a).

Section 164(d) of the Act makes grant recipients liable to the United States for repayment of amounts not expended in compliance with the Act. It also specifies “[N]o such action (i.e., repayment of disallowed amounts) shall be taken except after notice and opportunity for a hearing . . .” Section 164(d) of the Act, 29 U.S.C. § 1574(d).⁷ Section 164(e)(1) sets forth the “conditions for recipient’s liability.” 29 U.S.C. § 1574(e)(1)(emphasis added). That is, a recipient, i.e., DCCA, is liable if the misexpenditure was due to its “willful disregard of the requirements of this chapter, gross negligence, or failure to observe accepted standards of administration.” Section 164(e)(2) sets forth the “conditions for recipient’s liability for subgrantee noncompliance.” 29 U.S.C. § 1574(e)(emphasis added). Subsection (e)(2) further specifies the criteria for the imposition of sanctions, under section 164. 29 U.S.C. § 1574(e)(2). The provisions of 20 C.F.R. § 627.704, pertaining to “waiver”, differ somewhat but are not inconsistent with the criteria of section 164(e)(2) of the Act. 29 U.S.C. § 1574(e)(2).

Subsection 164 (e)(2) establishes an initial gateway, in cases such as this, to the criteria of subsection 164 (e)(1), when a subgrantee has committed violations, by explicitly requiring the Secretary to first consider specifically enumerated criteria before imposing any sanction, such as repayment, and by permitting waiver of the sanctions if a recipient has demonstrated “substantial compliance” with the enumerated criteria.⁸ The language of section (e)(2) is not at all ambiguous. It plainly states, “[I]n determining whether to impose any sanction . . .” “[I]n accordance with section 164(d) of the Act, the primary sanction for misexpenditure of JTPA funds is repayment.” 20 C.F.R. § 627.708(a). If it is determined the sanction of repayment applies, then section 164(e)(1) merely sets forth the test to determine whether the repayment must come from non-JTPA funds. Under section 164(e)(1), a recipient is liable for repayment, from non-JTPA grant funds, when the misexpenditure was due to “willful disregard of the requirements of this chapter, gross negligence, or failure to observe accepted standards of administration.” 29 U.S.C. § 1574(e)(1). If it is established the recipient, i.e., DCCA here, did not engage in “willful disregard of the requirements of this chapter, gross negligence, or failure to observe accepted standards of administration,” then “offset” against JTPA funds which the recipient is or may be entitled must

⁶ “In accordance with section 164(d) of the Act, the primary sanction for misexpenditure of JTPA funds is repayment.” 20 C.F.R. § 627.708(a).

⁷ In *Arizona Dep’t of Economic Security v. U.S. DOL*, 94-JTP18 (ARB June 7, 1996), *pet. filed* (9th Cir. July 3, 1996), The Board observed the ALJ erred in “presum[ing] that §§ 164(d) and §§ 164(e)(1) rely on different theories of liability. [Rather] liability under §§ 164(e)(1) is premised on a finding under §§ 164(d) that funds were not expended in accordance with the JTPA.” (The holding of the case deals with a “notice” issue. The ARB considered the § 164(e)(1) factors and found maladministration by the state making offset inappropriate.)

⁸ Cf. *US DOL v. Commonwealth of Pennsylvania, et al*, 92-JTP-12 (ARB March 5, 1995).

be considered.⁹

The “gateway” criteria of section 164(e)(2) are whether the recipient has adequately demonstrated it has:

(A) established and adhered to an appropriate system for the award and monitoring of contracts with sub-grantees which contains acceptable standards for ensuring accountability;

(B) entered into a written contract with such sub-grantee which established clear goals and obligations in unambiguous terms;

(C) acted with due diligence to monitor the implementation of the sub-grantee contract, including the carrying out of the appropriate monitoring activities (including audits) at reasonable intervals; and,

(D) taken prompt and appropriate corrective action upon becoming aware of a violation of the act (chapter 19) or regulations under the act by such sub-grantee.

29 U.S.C. § 1574(e)(2).¹⁰

The inquiry before this forum was thus whether the sanction, i.e., repayment of \$40,870.00, determined by the Grant Officer meets the “conditions for recipient’s liability” and “conditions for recipient’s liability for subgrantee noncompliance” of sections 164(e)(1) and (2) of the Act. Since it is admitted the funds were not expended in accordance with the JTPA, DCCA’s liability is established, under section 164(d).

The DOL conceded and there is no question that the misexpenditure was not due to DCCA’s “willful disregard” of JTPA requirements or DCCA’s “gross negligence”. However, the DOL asserted DCCA failed to observe accepted standards of administration. As the DOL points out, such standards derive from several sources. Standards are set forth in 29 C.F.R. part 97.1, the “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.” 29 C.F.R. part 96, is entitled “Audit Requirements for Grants, Contracts, and Other Agreements” and implements OMB Circular A-128, “Uniform Audit Requirements for State and Local Governments.”

The JTPA requires each state to “establish fiscal control and fund accounting procedures as may be necessary to assure the proper disbursement of and accounting for Federal funds” paid

⁹ It is clear, offset is an entirely discretionary matter limited only by § 164(e)(1) aggravating factors. *Job Service North Dakota v. US DOL*, 91-JTP-5 (1992); *Arizona Dep’t of Economic Security*.

¹⁰ The Workforce Investment Act of 1998 does not significantly change these criteria. 29 U.S.C. § 2934(d)(2). 20 C.F.R. § 629.44(d)(3) provided that “prompt, appropriate, and aggressive debt collection action” to recover subrecipient misspent funds is ordinarily considered part of the corrective action required by § 164(e)(2)(D).

under Title III. 29 U.S.C. § 1574(a)(1). Those procedures are to “ensure all financial transactions are conducted and records maintained in accordance with generally accepted accounting principles applicable in each state.” *Id.* Recipients must keep records sufficient to trace funds “to a level of expenditure adequate to insure that the funds have been spent lawfully.” 29 U.S.C. § 1575(a)(1); 29 C.F.R. § 629.35. Attachment F, OMB Circular A-110, “Standards for financial management systems,” (applicable to DCCA, not LTTC) provides that “it is not intended that each agreement awarded to the recipient be examined,” but examinations on an organization-wide basis to test the fiscal integrity of financial transactions, and the effectiveness of financial management systems and internal procedures will be conducted with “reasonable frequency,” depending on the nature, size and complexity of the activity, to determine compliance with the terms and conditions of Federal grants and other agreements.

The fiscal control and accounting procedures of the state and its subgrantees must be sufficient to permit the tracing of funds to a level of expenditure adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes. 29 C.F.R. § 97.20(a)(2). Subrecipients must have budget controls such that actual expenditures or outlays can be compared with budgeted amounts for each grant. 29 C.F.R. § 97.20(b)(4). Under 29 C.F.R. § 97.26, DCCA was required to determine whether its subgrantees, i.e., LTTC, had met audit requirements and determine whether grant funds were lawfully spent by means of reviewing the subrecipient’s own audit or other means, i.e., program reviews, if the subrecipient had not had such an audit. 29 C.F.R. § 96.29(b). A subgrantee’s material failure to comply with any term of the award, including applicable regulations or the Act, provides a basis for enforcement action such as suspension or termination of the current award or program. 29 C.F.R. § 97.43.

The primary consideration in selecting organizations to deliver JTPA services in a service delivery area is the “effectiveness of the . . . organization in delivering comparable or related services based on demonstrated performance (in accordance with guidelines established by the Secretary) in terms of the likelihood of meeting performance goals, cost, quality of training, and characteristics of participants.” 29 U.S.C. § 1517(a). Selection of service providers requires documentation of compliance with procurement standards established by the Governor, under 29 U.S.C. § 1574. 29 U.S.C. § 1517(e)(2). Every “service delivery area” must be included in a substate area. 29 U.S.C. § 1661a. Each substate plan, approved by the Governor, must include selection procedures “which take into account past performance in job training or related activities, fiscal accountability, and ability to meet performance standards.” 29 U.S.C. § 1661b(6). Organizations which are not financially stable, have inadequate management systems, or which fail to meet other specified criteria may be considered “high risk” grantees. 29 C.F.R. § 97.19(a). If a grant is awarded to such a “high risk” grantee, special conditions or restrictions must be included in the award commensurate with the degree of risk. 29 C.F.R. § 97.19(b).

Closeout of a grant does not affect DOL’s right to disallow costs or recover funds on the basis of a later audit or other review or the grantee’s obligation to return funds. 29 C.F.R. § 97.51. An administrative law judge has “the full authority of the Secretary under section 164 of the Act” in ordering relief. 20 C.F.R. § 627.803.

DISCUSSION OF FACTS AND LAW

The grant officer met his burden of production, under 20 C.F.R. § 627.802(e), to support his final determination by submitting an Administrative File (containing 25 exhibits) which was admitted into evidence. The Grant Officer established that \$40,870.00 in JTPA Title III grant funds was not expended in accordance with the Act and that this was a direct result of Jewel Frierson's false claims. Under 20 C.F.R. § 627.802(e), the complainant (DCCA) has the burden of persuasion to establish that the grant officer's final determination should be overturned in whole or in part. DCCA has not established that the Grant Officer's determination of the disallowed amount or the basis for that finding should be overturned. In fact, DCCA had never challenged those elements.

Repayment Sanction

In determining whether to impose the sanction of repayment, in this case, it must be determined whether the recipient has met the four (4) "gateway" criteria of 29 U.S.C. § 1574(e)(2).

§ 164(e)(2)(A)

First, has DCCA adequately demonstrated it had established and adhered to an appropriate system for the award and monitoring of contracts with sub-grantees which contains acceptable standards for ensuring accountability?

The DOL argued LTTC was not a responsible service provider, given its pre-grant history of financial problems. (TR 143). Since the DCCA presented no evidence related to LTTC's selection, the DOL argued it has not demonstrated that it "established and adhered to an appropriate system for the award of this contract." (TR 144).

DCCA argued that this was a relatively small grant for a short time period and given that DCCA was thus more than diligent in its monitoring. (TR 153, 155). However, DCCA admitted LTTC "was not a stellar grantee." (TR 155).

I agree that DCCA staff members conducted timely and frequent monitoring visits, particularly given the relative grant amount and short time period of this grant. However, no evidence was presented to show DCCA had an appropriate system for the award of contracts with sub-grantees. Although the evidence demonstrated DCCA personnel were very experienced in handling JTPA grants, the evidence presented did not establish DCCA's system for the award and monitoring of contracts with sub-grantees contained acceptable standards for ensuring accountability. While DCCA admitted LTTC was "not a stellar" subrecipient," no evidence was presented that it was evaluated prior to the grant award or that it was considered for the special "high risk" category.¹¹ While DCCA had a computerized reporting system for such grants, scant

¹¹ DCCA argues its treatment of LTTC was tantamount to the treatment afforded a "high risk" sub-recipient. It appears that an adequate system for grant awards very well would have resulted in a formal "high risk" designation.

evidence concerning the effective use of the system in this case was presented. In fact, the computerized JTPA Management System contained no indication that any of LTTC's participants received OJT.

Moreover, although LTTC had spent \$46,082.19 in administrative costs, more than its \$43,290.00 allocation for such costs, DCCA neither disallowed this overage or discovered it, having no required procedure for comparing actual grant costs to budgeted costs. Subrecipients must have budget controls such that actual expenditures or outlays can be compared with budgeted amounts for each grant. 29 C.F.R. § 97.20(b)(4). DCCA's monitoring did not disclose this failure. Finally, while Mr. Gandhi testified that the programmatic monitors, i.e., Mr. Daigh's unit, was responsible for comparing LTTC's budget with LTTC's accounting records, no evidence was present that Mr. Daigh was aware of this responsibility. Nor was evidence presented that Mr. Daigh's unit was aware LTTC did not have a cost category for OJT which was a "programmatic" monitoring matter as Mr. Gandhi testified.

The Administrative File ("AF" or RX 1) reflects LTTC was deeply in debt to its Director and its related Union at the time the grant was awarded. (AF at 76, 77, 78, 81). Mr. Frierson made personal loans to the financially troubled Union which would then make loans to LTTC. LTTC and the Union's debts to the Director amounted to about \$200,000.00. (AF at 78). Many of the first LTTC expenditures were to the Director or Union to repay loans. (AF at 85). Mr. Gandhi, DCCA's fiscal monitor, did not know LTTC was in financial difficulty at the time of the grant award and was unaware of any pre-award fiscal evaluation. (TR 84, 86).

In addition, LTTC's management system reflected conflicts of interest.¹² Mr. Frierson, LTTC's Director, employed both his daughter and her husband on LTTC's staff, who were paid about \$30,000. (AF at 88, 89). Frierson was both the Union President and LTTC's Director while the Union was LTTC's creditor. (AF at 81). Neither the DCCA's fiscal monitor, Mr. Gandhi, nor its "programmatic" monitor, Mr. Daigh, observed these conflicts, a fault with DCCA's monitoring system versus malfeasance by the named employees. Had DCCA had an appropriate system for monitoring the award of contracts with sub-grantees, it would have designated LTTC as a "high risk" grantee.

§ 164(e)(2)(B)

Second, has DCCA adequately demonstrated it had entered into a written contract with such sub-grantee which established clear goals and obligations in unambiguous terms?

On January 5, 1989, DCCA provided a JTPA grant, No. 88-70128, under a written contract, with Local 194 Technical Training Center (LTTC), the "subgrantee", providing for the availability of a maximum amount of \$312,410.00 in JTPA funds. The period of the grant was 11/1/88-6/30/89. LTTC was eligible for reimbursement of allowable costs incurred during that period. The grant expired on 6/30/89. The purpose of the grant was to assist Chicago-area

¹² See Grant Agreement at 8 and 9 set forth *supra*.

Campbell Soup Company employees, who had lost their jobs due to a plant closing.

The DOL argued that “the testimony seems to show that the contract actually allowed for spontaneous shifting of funds among categories even after costs had actually been claimed and paid for one category.” (TR 145). Further, the DOL argues although OJT was anticipated, it was not required and even though claims for OJT costs were submitted, the claimed costs did not have to be for OJT. Thus, the DOL argues DCCA has not established the contract was clear. (TR 145). Finding the Grant Agreement itself satisfactory, I do not accept these arguments.

The Grant Agreement established budgetary limitations, strict methods of compensation, repayment of misspent funds or overpayments, strict fiscal control requirements, liberal and comprehensive inspection authorizations, and an annual financial audit and compliance audit. The Grant included a comprehensive section (Part IV, 66 pages) dealing with the scope of work which contained eight objectives and evaluation criteria. Section IV, Appendix I, C, contained a description of the subrecipient’s administrative plan related to monitoring, fiscal reports, and corrective action plans. Section D set forth the specifics of LTTC’s fiscal systems, including procedures to control classification of costs and reconciliation of accounts. The terms of the Grant Agreement, relevant portions of which are set forth above, established clear goals and obligations in unambiguous terms.

§ 164(e)(2)(C)

Third, has DCCA adequately demonstrated it had acted with due diligence to monitor the implementation of the sub-grantee contract, including the carrying out of the appropriate monitoring activities (including audits) at reasonable intervals?

DOL admits and I find that periodic monitoring activities took place. (TR 146). DOL argues DCCA had a communications problem between Mr. Daigh’s “programmatic” unit and Mr. Gandhi’s fiscal monitoring unit. (TR 146). Mr. Gandhi did not have LTTC’s initial claim, at the time of his first fiscal monitoring visit, and was thus unaware of the OJT claim. Further, since LTTC’s books, examined by the fiscal monitors, did not reflect OJT costs, they did not look for documentation to support the claimed OJT costs.¹³ Mr. Gandhi admitted he was not trying to verify whether particular projected costs were incurred, but rather whether costs reflected in LTTC’s books were necessary, reasonable and allowable. (TR 59, 77-78). Thus, the DOL argued and I agree, DCCA does not appear to have had a system whereby claimed costs are compared and verified with costs actually paid. (TR 147).

Further, DOL argued and I find the Grant Agreement specifically required an audit, no audit was conducted, and DCCA “apparently let that go.” (TR 148). DOL points out that Mr. Gandhi testified that typically administrative costs run about 10-20 percent of a grant and that the administrative costs here exceeded that which should have alerted DCCA. I agree that, under the regulations then in effect, this discrepancy should have alerted DCCA.

¹³ Mr. Gandhi did not inquire into OJT costs and charges. (TR 78). The OJT cost category would have been sampled had the books reflected OJT costs. (TR 79-80, 87-88).

DCCA's Mr. Daigh testified that the most important aspect of programmatic monitoring is ensuring each grantee's participants are eligible for training. (TR 37-38). DCCA clearly ensured this through its periodic visits to LTTC. While I agree grantee participant eligibility and proper file documentation is important, there are other monitoring requirements, more fully discussed below, which appear equally if not more significant.

LTTC exceeded the administrative budget specified in the Grant Agreement by spending \$46,082.19 for administration. LTTC's administrative costs far exceeded the 15 percent JTPA and Grant Agreement limitations applicable to administrative costs, accounting for over one-third of total grant expenditures. 20 C.F.R. § 631.13 (1998); Grant Agreement at 3. However, Mr. Dunkel testified that even had LTTC spent 100% of its expenditures on administrative costs, that would not have raised a "red flag" as long as the administrative expenditures did not exceed 15% of the total allocation designated for LTTC. (TR 128). As DOL points out, "Since LTTC spent only \$123,017 of the \$312,410 allocated to it, Mr. Dunkel did not view the disproportionate administrative costs as a problem." (DOL Brief at 9).

Mr. Dunkel, in essence, admitted since this was one grant among the 1600 grants reviewed by his unit annually it would have been unreasonable to have requested LTTC's cost reimbursement request from DCCA's auditors prior to visiting LTTC and to compare the initial invoice to LTTC's books and records. He also admitted that hypothetically, had he had LTTC's initial request it may have been possible to have discovered the discrepancy. (TR 112-114).

20 C.F.R. § 629.38 (1988) required DCCA to have monitored LTTC's charging of cost categories. As DOL points out, such monitoring could have been done through a comparison between claimed and actual costs. (Brief at 10). None of the witnesses made such a comparison, apparently because the division of duties among the monitors did not call for it.¹⁴ Thus, I agree with DOL's conclusion that "DCCA's overall monitoring protocol apparently contained a gap which left no one with responsibility of verifying claimed cost categories."¹⁵ (DOL Brief at 10).

DCCA presented no evidence that it monitored the grant requirement that sixty participants be enrolled in OJT, fifteen by December 1988, or that it attempted to verify LTTC was enrolling OJT participants as required. (Grant Agreement, Part V, Scope of Work, at 6). Had DCCA noted this discrepancy between the grant objectives and LTTC activities, it is possible they would have detected the claim for OJT costs was incorrect.

DCCA presented evidence that an audit may not necessarily reveal fraud. However, no audit was conducted. Contrary to DCCA's arguments, I find that an audit of LTTC was required

¹⁴ DCCA admits, in its brief, that it "does not scrutinize the initial invoice, rather costs are reconciled through fiscal monitoring and the close-out package." (DCCA Brief at 7). Perhaps that is appropriate under current regulations, but it does not appear to be so under the 1989 regulations.

¹⁵ In arguing that DCCA did not unreasonably fail to examine LTTC's initial invoice because it was, in actuality, a claim for anticipated cost, DCCA avers the regulations permit such "advance" payments. DCCA argues that 20 C.F.R. § 627.430(c) permits advance payments under grant awards. However, that provision was non-existent at the time of the grant. 20 C.F.R. § 629.31 (1989), "Grant Payments", contained no similar provision for advance payments.

by the Act, regulations and Grant Agreement itself, as noted above.¹⁶ (§ 164(a)(2), JTPA; 29 C.F.R. §§ 96.202 and 96.504 (1988); and, Grant Agreement at 4). While DCCA showed that an audit may not guarantee discovery of every misexpenditure, none was conducted.

DCCA did not adequately demonstrate it had acted with due diligence to monitor the implementation of the sub-grantee contract, including the carrying out of the appropriate monitoring activities at reasonable intervals, because DCCA did not show it had a system whereby claimed costs are compared and verified with costs actually paid, it was seemingly unconcerned with the red flag raised by LTTC's excessive administrative costs, it did not compare LTTC's activities with the Grant requirements, it did not audit LTTC and it failed to ensure LTTC conducted a required audit.

§ 164(e)(2)(D)

Fourth, has DCCA adequately demonstrated it had taken prompt and appropriate corrective action upon becoming aware of a violation of the act (chapter 19) or regulations under the Act by such sub-grantee?

The DOL argued that DCCA's failure to take any corrective action was a result of its own lack of diligence. (TR 150). The DOL admits that LTTC is defunct and no funds are available from it. (TR 150). DCCA argues that each of its post-monitoring visit letters establish the corrective action contemplated by the Act. (TR 154).

There is evidence that DCCA may not have been informed of the final results of the investigation, dated September 18, 1997, until 1999; some ten years after the grant closeout.¹⁷ LTTC is defunct, but I note the Grant Agreement itself required LTTC to post a bond which it averred it had done with Surety Co. No evidence was presented that any effort was made to recover under the bond although the parties agreed there is no avenue for recovering the disallowed amount from LTTC or its former director. Further, although DCCA was not invited to participate in the development of the Consent Order, the Order did not bar collection efforts against either Mr. Frierson or LTTC. It merely barred further action under the False Claims Act. Although DCCA's post-monitoring visit letters and early termination of the grant demonstrate a level of diligence, DCCA took no collection action after becoming aware of the Consent Order and investigative results. Moreover, no evidence was admitted which suggested DCCA was aware of the surety bond required by the Grant or pursued any action to recover under it.

Thus, I find DCCA has not adequately demonstrated it had taken prompt and appropriate

¹⁶ The \$300,000 subrecipient audit requirement DCCA incorrectly cites, was not in effect at the time of this Grant. 29 C.F.R. § 96.54. The requirement at the time was for audits of subrecipients to whom \$25,000 or more was provided in a fiscal year. 29 C.F.R. § 96.504.

¹⁷ The fifteen month delay between the date of the investigative report and the Grant Officer's Initial Determination of February 10, 1999 is not explained. The District Court had entered its Consent Order on July 29, 1997.

corrective action upon becoming aware of a violation of the Act (chapter 19) or regulations under the Act by such sub-grantee.

Conclusions Regarding Repayment Sanction

DCCA has not adequately demonstrated it had met all the criteria of § 164(e)(2). Most notably, it failed to take prompt corrective action upon learning of the results of the investigation. Although its various units monitored LTTC, DCCA did not establish its system for fiscal monitoring contained acceptable standards for ensuring accountability. As I previously observed, the evidence in this case reveals DCCA's oversight system was constructed or implemented so its monitors saw the trees, but not the forest. This was highlighted by Mr. Gandhi's testimony which revealed several "programmatic" monitoring unit responsibilities which the evidence did not show that latter unit was aware of.

Offset¹⁸

In determining whether offset against federal funds or repayment from non-JTPA funds, under 29 U.S.C. § 1574(e)(1), is appropriate, I examine whether the mis-expenditure of funds

was due to DCCA's willful disregard of the requirements of the JTPA (chapter 19), gross negligence, or failure to observe accepted standards of administration on the part of the recipient, DCCA.¹⁹

The DOL has conceded that DCCA's conduct in relation to the misexpenditure of funds under this grant was neither due to willful disregard or gross negligence. The sole issue is whether DCCA failed to observe accepted standards of administration.

The Grant Agreement contains no criteria which suggests that DCCA considered LTTC a "high risk" subrecipient which required special grant conditions and restrictions or necessitated a higher level of scrutiny.

The Grant Agreement required an annual audit. (RX 3, Part II, paragraph 5). Under 29 C.F.R. § 97.26, DCCA was required to determine whether LTTC had met audit requirements and determine whether grant funds were lawfully spent by means of reviewing LTTC's own audits or

¹⁸ In its closing brief, the DOL maintained its argument that since LTTC never requested "offset" and failed to raise offset in its hearing request and the grant officer never considered it, I should not consider it *sua sponte*. However, the regulations do not require a "request" to implement the "collection" mechanism of § 164(e)(1), i.e., repayment from non-JTPA funds. If DCCA "passed" section (e)(1)'s criteria, then § 164(d) provides "no such action", i.e., offset, shall be taken without a hearing. Thus, I conclude the grant subrecipient need not have previously raised the matter in order for me to consider it.

¹⁹ DCCA's arguments, concerning standards of administration, rely on 20 C.F.R. § 627.400 *et seq.* However, Sections 627.400 *et seq.* were not in effect at the time of the Grant. Rather, 20 C.F.R. §§ 627.31-46 were in effect.

by other means, i.e., program reviews, if the subrecipient had not had such an audit. 29 C.F.R. § 96.29(b). LTTC never conducted an audit.

A subgrantee's material failure to comply with any term of the award, including applicable regulations or the Act, provides a basis for enforcement action such as suspension or termination of the current award or program. While DCCA suspended the grant before all grant funds were expended, the record is unclear as to the basis for the suspension. However, it is established that Mr. Frierson's fraud was not the reason.

Mr. Gandhi's testimony that with better intra-agency communication the fraudulently claimed OJT costs "might" have been picked up earlier is particularly damning. (TR 93). During the grant period, Mr. Daigh's "programmatic" staff conducted two formal visits and visited informally an unknown number of times. (TR 37). The purpose of a first visit would have been to familiarize the subrecipient with JTPA policies. In an initial visit, his unit found LTTC did not meet DCCA's documentation requirements for participant eligibility and thus conducted a 100% file review. (TR 39). This was reported on and corrected. (TR 40; CX 1). According to Mr. Daigh, LTTC, as a new grantee, got an earlier monitoring visit than DCCA's regular grantees. However, DCCA did not prove the programmatic staffs' visits were or would have been adequate to detect the misexpenditure of JTPA funds.

While it appears that Mr. Daigh's "programmatic" unit and Mr. Gandhi's "fiscal" monitoring unit each likely carried out its own narrow function in a satisfactory manner, the apparent lack of communication between the units and Mr. O'Brien's unit resulted in each merely examining the proverbial trees while not seeing the forest.²⁰ LTTC's lack of a proper financial audit, as required by the Grant Agreement and regulations, compounded by DCCA's failure to enforce the audit requirement and its lack of internal communications, all combined with the result that Mr. Frierson's false claim was erroneously paid.

In conclusion, I find DCCA failed to observe accepted standards of administration. Thus, offset against JTPA or WIA funds would be inappropriate. DCCA must repay to the United States the \$40,870.00 from funds other than JTPA or WIA funds.

CONCLUSIONS

DCCA is liable for the repayment of \$40,870.00 in misspent and disallowed JTPA Title III funds. The evidence presented did not establish DCCA's system for the award and monitoring of contracts with sub-grantees contained acceptable standards for ensuring accountability.²¹ The terms of the Grant Agreement established clear goals and obligations in unambiguous terms. DCCA did not adequately demonstrate it had acted with due diligence to monitor the

²⁰ I note, contrary to the testimony, that 20 C.F.R. § 627.37(a) made general expenses required to carry out the overall responsibilities of a subrecipient unallowable, with limited exceptions not applicable here.

²¹ This conclusion does not mean that DCCA's overall system for awarding and monitoring such grants is inadequate, but rather that the evidence presented in this matter did not reflect the same.

implementation of the sub-grantee contract. DCCA did not adequately demonstrate it had taken prompt and appropriate corrective action upon becoming aware of a violation of the Act or regulations by LTTC. The misexpenditure of funds was due to LTTC's fraud and DCCA's failure to observe accepted standards of administration. Offset against JTPA or WIA funds is inappropriate. DCCA is obligated to repay the United States the misspent \$40,870.00 from funds other than JTPA or WIA funds.

ORDER

WHEREFORE IT IS ORDERED THAT the Illinois Department of Commerce and Community Affairs (DCCA) repay the United States government the sum of forty-thousand eight hundred and seventy dollars (\$40,870.00) from non-JTPA or non-WIA funds.

RICHARD A. MORGAN
Administrative Law Judge

The decision of the administrative law judge shall constitute final action by the Secretary of Labor unless, within 20 days after receipt of the judge's decision, a party dissatisfied with the decision or any part thereof has filed exceptions with the Secretary specifically identifying the procedure, fact, law, or policy to which exception is taken. 29 U.S.C. § 1575(b).

RAM:dmr

